

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEBRA J. THOMPSEN,

Plaintiff,

v.

AARON S. BRESHEARS and  
JANE DOE BRESHEARS, husband  
and wife, the CITY OF PULLMAN,  
a municipal corporation of the State  
of Washington, and THE STATE  
OF WASHINGTON,

Defendant.

NO. CV-08-230-RHW

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
RECONSIDERATION**

Before the Court is Defendant Breshears' Motion for Reconsideration (Ct. Rec. 62). The motion was heard without oral argument.

Defendant asserts that the Court created clear error when it denied his Motion for Summary Judgment. Defendant's motion is not well-taken. In its Order, the Court concluded that the jury will have to make the determination whether Breshears negligently or intentionally administered the tests in a manner that would provide the wrong results, or negligently or intentionally misinterpreted the result of the test. The Court concluded that the jury will have to determine whether Plaintiff did or did not fail the field sobriety test.

Defendant urges the Court make these factual determinations in his favor. However, this is not the role of the Court. It will be up to the jury to determine whether Plaintiff's constitutional rights were violated.

**ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Reconsideration (Ct. Rec. 72) is **DENIED**.

3 2. Plaintiff's Motion for Extension of Time to Respond to Defendants'  
4 Motion for Reconsideration (Ct. Rec. 77) is **DENIED**, as moot.

5 3. Plaintiff's Motion to Expedite (Ct. Rec. 80) is **DENIED**.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
7 Order and forward copies to counsel.

8 DATED this 8<sup>th</sup> day of September, 2009.

9 *s/ Robert H. Whaley*

10 ROBERT H. WHALEY  
11 United States District Judge

12 Q:\CIVIL\2008\Thompson\denyrecon.wpd  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28